The agreement on which the plaintiff sues is that the defendant promised to give his daughter in marriage to the plaintiff's son in consideration of the plaintiff's promise to pay the defendant a sum of $100 on the celebration of the marriage. It is further alleged by the plaintiff that the defendant agreed to pay him $200 as damages in the event of the marriage not taking place.

Agreements to procure marriage for reward are void by the common law, as being contrary to public policy. See *Hermann* v. *Charlesworth*, (1905) 2 K. B. 123 and other authorities.

As to the law in India, see *Kalavagunta Venketa* v. *Kalavagunta Lakshmi*, (1908) 32 Mad. 185 which is a decision of the Full Bench of the Madras High Court, that a contract to make a payment to a father in consideration of his giving his daughter in marriage is to be regarded as immoral and opposed to public policy within the meaning of section 23 of the Indian Contract Act.

In the Federated Malay States there is the decision of Elphinstone, C. J., in *Khem Singh* v. *Anokh Singh*, 7 F.M.S.L.R. 199, that a marriage brokage agreement is void as having an object opposed to public policy within the meaning of section 23 of the Contract Enactment.

The learned Magistrate took the view that this agreement fell within the scope of section 8 of the Muhammadan Laws Enactment, 1904, which reads as follows:—

> "Any person, who, having either verbally or in writing entered into a contract of betrothal before a 'Mosque official or Penghulu or village headman, subsequently refuses to marry the other party to the contract, shall, upon suit by the said other party being willing to fulfil the contract be liable to be adjudged to pay to such other party the value of the *mas kawin* which would have been paid if the marriage had taken place. In any such case each party shall return all gifts made by the other."

That section gives a right of action to a party to a bethrothal where the other party refuses to carry out the agreement. The remedy is limited to the bride and bridegroom. The section, therefore, has no application to the facts of this case.

The contract on which this suit is founded is an agreement to pay money to the parent of a minor, in consideration of his consenting to give the minor in marriage. It is void as being contrary to public policy. An action for its breach will not lie.

The decision of the learned Magistrate will be reversed. Judgment will be entered for the defendant with costs.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

McFALL, J.

November, 3, 1933.

SIVA SUBRAMANIAN.....Plaintiff.

v.

N. V. VISUVALINGAM
W. PONNUDURAI
V. SARAVANAMUTTU
.....Defendants.

[SELANGOR CIVIL SUIT No. 255 of 1933]

Land Code, 1926 ss. 86, 87, 96, 98 and 110—Purchaser of charged land—Claim by purchaser against chargee for order for production of document of title in order to effect registration of transfer—Chargee's right of refusal of production.

A purchaser of charged land, the title of which has been deposited with the chargee, cannot obtain an order against the chargee for the production of the title in order to effect registration of the transfer.

The chargee is not a party to the contract for transfer. The vendor alone owes a duty to the purchaser, and the latter can look only to the vendor for redress.

Ernest Jeff for plaintiff.

G. W. Hastings for defendants.

Cur. Ad. Vult.

McFALL, J.—The Plaintiff, Siva Subramanian, sued the three defendants, N. V. Visuvalingam, W. Ponnudurai and V. Saravanamuttu, in their capacity as trustees of the Vivakanada Ashrama Society in Kuala Lumpur claiming:—

1. A declaration that the defendants are bound upon request by the plaintiff to deliver to the Registrar of Titles, Selangor, the issue copy of Grant No. 3413 in order that the transfer in favour of the plaintiff may be registered.
2. Such order as may be necessary to give effect to such declaration.
3. Dollars two hundred and fifty.
4. Such further or other relief as may seem just and expedient to this Honourable Court.
5. Costs.

At the trial plaintiff did not appear in person to prove damages, and no damages were proved.

The facts are that one Pillaiammah (f) was proprietor of the land held under Selangor Grant No. 3413. Pillaiammah charged the land for $10,000/- to defendants' society, and deposited the issue document of title with defendants. The charge was duly registered.

Later Pillaiammah sold and transferred, subject to the charge, an undivided half share of the land to one Ponnamah (f) and the transfer was duly registered.

On 18th April, 1933, Ponnamah sold this her undivided half share of the land to the plaintiff and prepared a memorandum of transfer of

that half share, subject to the charge, "in consideration of the sum of Dollars Two hundred paid to me by Sivasubramaniam son of Nagalingam of 66 Paul Street, Seremban, and in consideration of his undertaking to pay to the Trustees of the Vivekananda Ashrama one half of the loan of $10,000/- and interest now due to them under Charge No. 87928 Volume LXXXII Folio 12."

On the same day the plaintiff presented this transfer for registration at the Registry of Titles, Kuala Lumpur, and the presentation was noted in the presentation book, but registration refused because this transfer was not accompanied by the issue document of title of Selangor Grant No. 3413.

The Registrar called up the defendants to produce the issue document of title held by them; they have failed to do so, and the transfer remains unregistered.

Hence plaintiff brings this suit for the relief above set out.

The facts above set out are not disputed. The defendants plead:—

1. That they do not admit the consideration for the transfer was as pleaded by plaintiff and/or that there was any consideration for the said transfer.
2. That the issue document of title was in their possession in pursuance of an agreement with Pillaiammah the original Chargor of the land comprised in Selangor Grant for Land No. 3413 and in pursuance of an agreement entered into when the land was transferred subject to the charge to Ponnamah. The said title deeds were deposited as additional security to the defendants.
3. That the facts alleged in the plaint do not disclose a cause of action.
4. That it is not within the competence of the Court to give a declaration in accordance with the prayer in the plaint.

After evidence had been recorded, and addresses almost concluded, Jeff for plaintiff asked to join Ponnamah as a plaintiff in this suit.

The Court refused that order at that late stage as Ponnamah had not been called as a witness in the case, was absent and not formally represented and, admittedly, outside the jurisdiction of the Court.

It is admitted that deposit of the issue document of title with a first chargee is a universal practice. Section 150 of the Land Code, 1926, (as amended by Enactment 31 of 1928) assumes the practice.

Plaintiff has bought from Ponnamah her undivided half share in the land. It is for Ponnamah to perform her part of the contract with plaintiff by carrying out a proper transfer of the land. Defendants are not a party to that contract, and are under no obligation to plaintiff under that contract.

Are defendants liable to plaintiff in any other way? The relevant sections of the Land Code, 1926, are as follows:—

> "110. When any land is intended to be transferred the transferor and transferee shall execute a memorandum of transfer in the form in schedule XX, which memorandum shall for description of the land refer to the register document of title therefor, and shall present the same together with the issue document of title.
>
> "86. The proper registering authority shall consider whether the instrument presented is in itself fit for registration and whether all documents that should accompany it have been delivered therewith.
>
> "87. (i) If the proper registering authority shall decide that the instrument is in itself unfit for registration, or that any documents which should accompany it have not been delivered therewith, he shall not register it, but he shall reject it, mark it as rejected and return it to the person who presented it.
>
> (ii) The proper registering authority shall reject any instrument which contravenes the provisions of any written law or any condition expressed or implied in the document of title.
>
> "96. No instrument until registered in manner hereinbefore prescribed shall be effectual to pass any land or any interest therein or render any land liable as security for the payment of money, but upon the registration of any instrument in manner hereinbefore prescribed the land or interest specified shall pass or, as the case may be, the land shall become liable as security in manner and subject to the agreements, conditions and contingencies set forth and specified in such instrument or by this Enactment declared to be implied in instruments of a like nature.
>
> "98. In every instrument creating or transferring any interest in land there shall be implied the following agreement by the party creating or transferring such interest, that is to say that he will do such acts and execute such instruments as in accordance with the provisions of this Enactment may be necessary to give effect to all agreements, conditions and purposes expressly set forth in such instruments or by this Enactment declared to be implied against such party in instruments of a like nature."

Until the transfer from Ponnamah to plaintiff has been registered, plaintiff is not the owner of this land, has no interest therein, and has no right in connection therewith which enables him to call upon defendants to produce the issue document of title to the Registrar of Titles.

The Court holds that plaintiff is not entitled to a declaration in the terms plaintiff has prayed. Suit dismissed with costs.

Judgment accordingly.